IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 436 OF 2001

1. Rahul Bhimrao Katare]
age : 19 years, Occ: Nil]
R/at. Shivaji Nagar, Satpur]
Nashik]

2. Lahanu Waman Katare]
age : 24 years, Occ: Nil]
R/at. Sawargao, Tal. Dist]
Nashik]

3. Rajendra Shankar Katare]
age : 25 years, Occ: Nil]
R/at Gangapur, Tal. Dist.]
Nashik] ..Appellants
(Org.Accused 1 to 3)

versus

The State of Maharashtra]
(At the instance of P.I. Nashik]
Taluka Police Station,]
Dist : Nashik]..Respondents

Mr. A. P. Mundargi for the Appellants - Original Accused Nos. 1 to 3.

Mr. P. S. Hingorani, APP for the Respondents - State.

CORAM : D. G. DESHPANDE, &
V. M. KANADE, JJ.

DATE : 22ND DECEMBER,2005

ORAL JUDGMENT (PER D. G. DESHPANDE, J.) :

1. Heard learned Advocate for the Appellants -

Accused and learned APP for the Respondents - State.

2. All the accused who have been convicted by the trial court for offence under Section 302 r/w 34 of I.P.C. and sentenced to imprisonment for life and fine, have filed this Appeal.

3. The facts giving rise to the prosecution case are as under :

. Complainant was Gangubai. She was the victim in this case. She was residing with her husband and children at Village Govardhan. Her husband’s name is Hiraman. Gangubai had a son by name Vikas. He was assaulted by Rahul Bhimrao Katare (Accused No.1) and Rajendra Shankar Katare (Accused No. 3), for which Gangubai had lodged a complaint against them in Sarkarwada Police Station, Nashik.

4. According to the prosecution on 2.6.2000 Gangubai was preparing food in her kitchen. At that time all these three accused came there, accused were asking Gangubai to withdraw the complaint from the Police station. She refused to do so.

Thereafter Gangubai was assaulted and then accused No.1 Rahul poured kerosene from the can on the person of Gangubai and accused No.3 set her on fire with alighted match stick. Accused No.2 asked the others two to set her on fire and also threatened to stab her. After this, the accused fled away from the house.

5. Shashikant Dodake a boy in the neighbourhood extinguished the fire by placing Godhadi (quilt) on her person. She was removed to the hospital. Message was given by Police Constable Bhangare to Special Judicial Magistrate for recording dying declaration. In course of time, three dying declarations came to be recorded one after the other. Gangubai succumbed to the burn injuries and died. On the basis of her statement, offence was registered initially under Section 307, 507 r/w 34 of IPC. Later on it was converted to Section 302.

6. Thereafter, investigation was carried out, accused were arrested, their clothes were seized, they were sent to C.A. Post Mortem of the body of Gangubai was carried out and after completing the investigation, charge sheet was filed. During the

trial, prosecution examined 10 witnesses. The defence of the accused was of total denial and false implication. That was rejected by the trial court. The case was held to have been proved and the accused came to be convicted, as stated above, hence this Appeal.

7. Learned Advocate for the accused mainly contended that Gangubai had suffered 68% burns. It was impossible for her to speak and give three dying declarations consecutively. Further, according to him dying declarations were contradictory to each other. No specific roles were attributed to all the three accused, and, nothing incriminating was recovered from the accused and since admittedly there was enmity between the deceased and the accused, the accused were falsely implicated.

8. On the other hand, the learned APP contended that all the three dying declarations are consistent. They are identical so far as material particulars are concerned, the discrepancies, if any, are minor. Appellants - Accused had a strong motive to eliminate Gangubai. They wanted her to withdraw complaint lodged by her, dying declarations

were independent, nobody was interested or prejudiced against the appellants - accused, and, therefore, the conviction was proper.

9. It is a fact that Gangubai died as a result of burn injuries. Post Mortem report Exhibit 24 proves that she had 65% burns and the cause of death is Cardio Respiratory Arrest due to Burns Injury shock. The burn injuries are not suicidal nor accidental. There is no such defence nor any case put to the witness nor the circumstances take the prosecution case to that end. This report was came to be proved by doctor Sanjay Jadhav - P.W. 1. A suggestion was put to him that if a woman is preparing food on a ota by standing beside it, then the burn is possible from front side by a stove. This suggestion disprove the prosecution case that Gangubai died a Homicidal death.

10. So far as involvement of the appellants - accused is concerned, the prosecution examined Dr. Madhukar Shankhpal - P.W. 3. He was present at the time when Special Judicial Magistrate Mr. S. S. More visited the Civil Hospital, Nashik, and recorded the dying declaration. This witness has

stated that he examined Gangubai, found her to be conscious and able to give statement, and, accordingly she gave statement to the Special Judicial Magistrate. After the statement was recorded, again he examined and gave his certificate. He has proved his both the signatures and endorsement at Exhibits 30 and 31 respectively. There is absolutely no cross examination and only thing that is pointed out to the Doctor is that in the endorsement Exhibits 30 and 31 the word "conscious" is missing. The doctor has stated in the endorsement Exhibits 30 and 31 that the patient is in a state of giving statement. The absence of word "conscious" does not make any difference because the doctor in his cross examination could not be deviated from his evidence. Nothing is brought on record that he is giving false statement, and, he has no reason to do so. This dying declaration of Gangubai is proved by the prosecution by examining Special Judicial Magistrate Mr. S.S. More as P.W. 2. He has stated that he was appointed as Special Judicial Magistrate for Nashik Division. He received a memo on 2.6.2000 from Nasik Taluka Police Station. He proved the same at Exhibit 36. It was for recording dying declaration

of Gangubai Hiraman. Thereafter, according to him at 5.30 p.m. he immediately went to the Civil Hospital. He met the Medical Officer at the Hospital and asked the doctor to find out whether Ganugbai was in a position to give statement. The doctor accordingly examined and gave the certificate. Then, he asked the person present in the ward to go outside. He ascertained the name of Gangubai and then recorded her statement, wherein she has stated that she was preparing the food in the house at 11 a.m. The door of the house was opened. They entered the house. Her back was facing the door and without making any enquiry they poured kerosene oil. One lit the match stick. One was pouring the kerosene oil while another lit the stick. She asked them what they are doing. Then they ran away. She disclosed the name of the assailants i.e. Lahanu Bhimrao Katare, Raju Shankar Katare and Rahul Bhimrao Katare i.e. all the three accused. She also stated that a boy extinguished the fire by putting the quilt around her and then Special Judicial Magistrate also asked her what was the reason of this assault upon her. She stated that there was a quarrel between her eldest son and Raju, and, Raju instigated the boys to beat her son.

She made police complaint about that. Accused were asking her to compromise, she did not do so, therefore they set her on fire. Special Judicial Magistrate also stated that the statement was read over to Gangubai. Gangubai admitted it to be correct, her thumb impression was obtained and the Medical Officer's certificate was obtained. He proved the dying declaration at Exhibit 27. In the cross examination nothing is brought on record to discredit the witness. The trial Judge appeared to have asked the witness whether he had come across the husband of Gangubai either before or after the work of recording of dying declaration. The witness answered in the negative. Witness was asked about certain particulars as to whether which specific accused poured kerosene and which of them set her to fire with lighted match stick. Witness stated that he did not ask the specific questions.

11. It is on the basis of this evidence that the learned Advocate for the accused tried to contend that if in the dying declaration Gangubai has not attributed specific role to anybody then all the accused cannot be convicted under Section 302. This contention is required to be rejected on the basis

of further evidence on record. P.W. 4 Pandurang Hiraman Jagtap is the son of Gangubai. It is pertinent to note that all the accused are related to Gangubai. This witness has stated that accused No.1 is son of his cousin maternal uncle, while accused Nos. 2 and 3 were his cousin maternal uncles. This clearly shows that the accused were fully and completely known to Gangubai and the family members. One more witness Alka Govind Salve P.W. 5 is examined by the prosecution. She knows nothing about the incident nor she has any conversation with Gangubai. But the defence Advocate in this regard in over enthusiasm cross examined the witness and brought on record something which the witness has not stated in examination in chief. Firstly, the attention of the witness was invited to the police statement wherein she has stated that Gangubai told the witness that she has lodged complaint in the police station against the accused. Then Gangubai told the witness that the accused set her on fire by pouring kerosene on her. In fact it was not necessary to bring these things on record but the defence has brought them on record. FIR in this case is recorded on the basis of the statement of Gangubai. This was proved by

P.W. 7 Parashram Pandurang Gavit. In this FIR also Gangubai has given all the history and how she was burnt. She has stated that at 11 O'clock on 2.6.2000 these three accused came there to her house. They asked her to withdraw the complaint. She refused to do so, and, therefore, they i.e. Rahul Bhimrao Katare poured kerosene, Raju Shankar Katare lighted the match stick and Lahanu Bhimrao Katare was instigating others to burn her and was threatening to stab her. This is consistent with the dying declaration recorded by the Magistrate. There is absolutely no cross examination worthy consideration of this important witness. He denied that FIR was prepared on the basis of the dying declaration recorded by the Magistrate. Another important witness is P.W. 8 Vikas Hariman Jagtap. He has stated that he was knowing all the accused. On 28.5.2000 accused beat him. He lodged a report to the Police Station Sarkarwada against the accused, and, offence was registered. The accused were threatening Vikas and her mother to withdraw the case but it was refused. He has further stated that on 2.6.2000 his mother was preparing food. He heard hue and cry of his mother. He ran towards the house. He found that her mother sustained burn

injuries. A boy from neighbourhood Shashikant has placed quilt on her person. He enquired from Gangubai as to how it happened and the mother told the incident that accused set her on fire and that mother had disclosed the names of all the accused. She gave the entire history as to what happened in the morning, and, this witness therefore corroborates the dying declarations and the FIR. It will be therefore clear that there is strong corroborating evidence against the accused. They have been named in both the dying declarations and FIR. This witness also testified about that. Advocate for the accused tried to contend that role is not specifically attributed to each of the accused, and, in any case, one of the accused who neither poured kerosene nor ignite the fire, therefore, he cannot be held guilty. We are unable to accept this contention. The presence of the accused, their going to the house, their asking Gangubai to withdraw the complaint and they are being implicated earlier in criminal cases are facts proved on record. Therefore, they have a strong motive to eliminate Gangubai, she did not succumb to their pressurising tactics. They have been named specifically in the FIR and dying declarations. The

dying declaration is preceded and followed by medical certificate about the fitness of Gangubai. This evidence is corroborated by other evidence on record. Therefore, the trial court, has rightly believed the case of the prosecution and convicted the accused. There are no inconsistencies nor contradictions in the dying declarations oral as well as written.

12. Apart from this, when the accused were arrested their clothes were seized by the police. They were sent to the C.A. and the C.A. report disclosed that kerosene residue were found on the clothes. Exhibit 16 is the forwarding letter to the C.A. Aurangabad wherein the quilt (godadi) which was placed around Gangubai, some burn pieces of cloth and the clothes of three accused were sent for opinion and report. This was preceded by seizure of clothes as per Exhibit 19 regarding clothes of accused Lahanu, from him white shirt and ash colour pant was seized. Exhibit 20 is in respect of arrest of the clothes of Rahul Bhimrao Katare, from him brownish sky colour shirt and black pant was recovered. Exhibit 21 is the seizure memo of clothes from accused Rajendra Shankar Katare. From

him sky colour shirt and blue jeans was recovered. Prosecution filed C.A. reports and these reports were exhibited and the defence has not raised objection about that. The trial court has recorded that as per C.A. report the clothes of the accused showed presence of kerosene residue in the test conducted by the C.A.

13. Therefore, the judgment of the trial court is fully supported by the evidence on record. The motives of the accused are proved. Kerosene residue found on their clothes, clearly proves the involvement of the accused in the offence i.e. pouring kerosene on Gangubai. They have been named in the FIR and dying declarations and, therefore, all the circumstances were rightly considered by the trial court to convict the accused. We do not find any merit in this appeal. Therefore, the appeal is dismissed.

(D.G. DESHPANDE, J.)

(V. M. KANADE, J.)